

In the
Indiana Supreme Court



STATE <i>ex rel.</i> INDIANA STATE BAR)	Supreme Court Cause No.
ASSOCIATION,)	94S00-0810-MS-551
Relator,)	
)	
v.)	
)	
UNITED FINANCIAL SYSTEMS)	
CORPORATION, <i>et al.</i> ,)	
Respondents.)	

ORDER

This unauthorized practice of law action was remanded to Commissioner Embrey for further proceedings consistent with the opinion issued by this Court on April 14, 2010. State ex rel. Indiana State Bar Ass'n v. United Financial Systems Corp., 926 N.E.2d 8 (Ind. 2010). Several points of contention remain between the parties on matters pending on remand. On November 15, 2010, Commissioner Embrey filed with this Court a "Request of the Commissioner for Appointment of Successor Commissioner," noting, among other things, that Commissioner Embrey was successful in his bid for prosecuting attorney and will take office January 1, 2011, at which time he no longer will be eligible to serve as a senior judge.

The Court thanks Commissioner Embrey for his service in this matter and GRANTS his request for a successor. He is excused from this case, and the Court will appoint a successor commissioner by separate order in due course.

Having resumed jurisdiction until a successor commissioner is appointed, and being duly advised of the matters pending in this case, the Court ORDERS as follows:

- (1) With respect to the approximately \$19,500 in attorney fees expended by the ISBA as a result of UFSC's claims regarding the ISBA's past and current settlement practices, this Court's opinion directed the Commissioner to determine on remand the portion of that amount attributable to the claims regarding ISBA's past settlement practices. The parties are ORDERED to file short briefs, not to exceed 2,000 words, setting forth their positions with respect to the amount of attorney fees to be awarded to the ISBA pursuant to this Court's opinion. The ISBA's brief shall be filed no later than ten (10) days from the date of this order, and UFSC's response brief shall be due no later than ten (10) days from the date of service of the ISBA's brief. Both parties' briefs shall have white covers. No reply briefs shall be permitted. Both briefs shall conform generally to the provisions of the appellate rules governing briefing and word count except where logic or this order dictates otherwise.

(2) Although details regarding the notice requirement and restitutionary process remain to be resolved by the successor commissioner, UFSC thus far has refused to provide refunds even to those persons who have received notice of this Court's opinion and properly demanded a refund from UFSC pursuant to the terms of our previous opinion. UFSC apparently has taken the position that this Court's opinion does not permit the issuance of refunds until the Commissioner issues a restitutionary order. (See UFSC Respondents' Resp. to the ISBA's Renewed Req. for Ruling on Mot. to Recuse Comm'r and for Atty. Conf., at 4). This reading of our opinion is incorrect. Accordingly, UFSC is ORDERED, within ten (10) days of the date of this order, to issue refunds on all claims made to date to UFSC by persons entitled to refunds. Additionally, UFSC is ORDERED, within ten (10) days of the date of this order, to show cause why it should not be ordered to pay interest at the statutory rate on all claims made by persons entitled to a refund, effective from the date the claim was presented to UFSC.

The Clerk is directed to send copies of this order to Commissioner Embrey and to all counsel of record. The Clerk is also directed to post this order to the Court's website.

Done at Indianapolis, Indiana, this 21st day of December, 2010.

Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

All Justices concur.